

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

BRAHMSTEADT V. BRAHMSTEADT

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

BRUCE BEN BRAHMSTEADT, APPELLEE,
V.
PEGGY SUE BRAHMSTEADT, APPELLANT.

Filed August 7, 2012. No. A-11-869.

Appeal from the District Court for Dodge County: GEOFFREY C. HALL, Judge. Affirmed.

Shane J. Placek, of Sidner, Svoboda, Schilke, Thomsen, Holtorf, Boggy, Nick & Placek,
for appellant.

Avis R. Andrews for appellee.

INBODY, Chief Judge, and MOORE, Judge, and CHEUVRONT, District Judge, Retired.

INBODY, Chief Judge.

Peggy Sue Brahmsteadt appeals from the decree dissolving her marriage to Bruce Ben Brahmsteadt. She contends that the district court abused its discretion in valuing the parties' marital residence and in valuing and dividing Bruce's 401K.

STATEMENT OF FACTS

Bruce and Peggy were married on July 23, 1994. Two children were born of the marriage: a daughter born in November 1995 and a son born in May 2000. The parties separated on May 17, 2007; however, Bruce did not file a complaint for dissolution until March 29, 2011.

The parties were able to agree on the majority of issues, stipulating to the custody and visitation of their two minor children and to the equitable disposition of the majority of their marital property. The only marital property on which the parties could not come to an agreement involved the parties' marital residence, Bruce's 401K, and some minor debts. Trial was held on those limited contested issues. Evidence was adduced regarding three debts that were allocated to

the parties: a \$1,800 debt to Credit Bureau Services, which Bruce was ordered to pay; a \$369.14 Credit Management debt, which Peggy was ordered to pay; and a \$1,600 cellular telephone debt, which Peggy was ordered to pay. The allocation of these debts has not been appealed.

The evidence adduced at trial established that the parties had lived separately since May 17, 2007, and neither party had contributed to the other party's household expenses. Bruce remained in the marital residence and continued to make the mortgage payments. Bruce testified that the parties purchased the residence and an adjoining lot in 2001 for \$17,500 and that it was his opinion the house was worth a little less than they paid for it, approximately \$15,000 to \$16,000. The 2007 assessed value of the marital residence and lot was \$25,325, and the value of the adjoining lot was \$6,295; these amounts remained unchanged in 2011. In 2007, Bruce testified that he owed \$8,078.78 on the mortgage, but by the time of trial, he had reduced the amount owed on the mortgage to \$5,722.11. Peggy testified that she thought the marital property was worth \$35,000.

Bruce testified that he began working for his employer in June 2001, which was after the parties' marriage. At the time of the parties' separation, Bruce's 401K was worth \$20,696.57. At the time of trial, the value of the 401K had increased to \$41,504.60.

Following trial, the court filed a decree dissolving the parties' marriage. With respect to the contested issues, the district court made the following findings: The court awarded Bruce the marital residence subject to the mortgage and granted Peggy a \$7,500 payment for her interest in said property; the court awarded Peggy one-half of the value of Bruce's 401K as of May 17, 2007; and the court ordered Bruce to pay the Credit Bureau Services indebtedness and ordered Peggy to pay the Credit Management debt and the cellular telephone debt. Peggy timely appealed to this court.

ASSIGNMENTS OF ERROR

Peggy contends that the district court abused its discretion in valuing the parties' marital residence and in valuing and dividing Bruce's 401K; she has not appealed the court's distribution of the parties' marital debts.

STANDARD OF REVIEW

In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion. *Reed v. Reed*, 277 Neb. 391, 763 N.W.2d 686 (2009); *Titus v. Titus*, 19 Neb. App. 751, 811 N.W.2d 318 (2012).

ANALYSIS

Marital Residence.

The court awarded Peggy \$7,500 for her share of equity in the marital residence. Knowing that the court valued the marital property as of the date of the parties' separation, the value that the court placed on the marital residence can be calculated as follows:

Peggy's equity (½)	\$ 7,500.00
Bruce's equity (½)	7,500.00
Mortgage balance in 2007	<u>8,078.78</u>
Court's valuation	\$23,078.78

A value of \$23,078.78 for the marital property is between Bruce's valuation of \$15,000 to \$16,000 and Peggy's valuation of \$35,000. The court's valuation of the property is reasonable and certainly cannot be characterized as an abuse of discretion. See *Schaefer v. Schaefer*, 263 Neb. 785, 642 N.W.2d 792 (2002) (district court did not abuse its discretion in valuing home at \$30,000, where husband testified value of home was between \$25,000 and \$45,000 and wife testified that the value was \$35,000 to \$45,000).

Bruce's 401K.

Regarding the court's decision to value Bruce's 401K as of the date of the parties' separation, which was nearly 4 years prior to the filing of the complaint for dissolution and the trial, it likewise cannot be said that this was an abuse of the court's discretion. It is well settled that there is no "hard and fast" rule concerning the date on which marital property subject to division in a dissolution proceeding is valued, so long as the selected date bears a rational relationship to the property to be divided and is reviewed for an abuse of discretion. *Ging v. Ging*, 18 Neb. App. 145, 775 N.W.2d 479 (2009). Valuing the 401K on the date of the parties' separation bore a rational relationship to the property to be divided, and we cannot say that the court's decision to do so constituted an abuse of discretion.

CONCLUSION

Having reviewed Peggy's assigned errors and finding no abuse of discretion by the district court, we affirm the order of the district court.

AFFIRMED.